

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548SHANKS
24787

FILE: B-210211

DATE: April 11, 1983

MATTER OF: Darell K. Seymour

DIGEST:

Following a 1-workday break in service, a former employee of the Panama Canal Company, who received a lump-sum payment from the Company for his accrued leave, was reemployed by the Department of the Navy. He is required by statute to refund the amount of the lump-sum leave payment he received except the amount covering his one day break in service since he was employed in Government service during the period covered by the lump-sum payment. The Government's claim may not be waived since, even if it is considered as an erroneous payment, the employee was not without fault in the matter.

This action is taken upon the appeal by Mr. Darell K. Seymour, a civilian employee of the Department of the Navy, of the action of our Claims Group which denied his request for waiver of the claim of the United States against him. The claim arose as a result of a lump-sum payment made to him for annual leave following the termination of his employment with the Panama Canal Company. We conclude that under the circumstances of this case the denial of waiver must be sustained.

Mr. Seymour was separated from employment with the Panama Canal Company on Thursday, August 4, 1977. Following a 1-workday break in service, he was employed by the Department of the Navy and reported for duty at the Puget Sound Naval Shipyard on Monday, August 8, 1977. Subsequently he received payment from the Panama Canal Company for 497 hours of accumulated and accrued annual leave covering the period August 5 through October 31, 1977.

By memorandum dated October 18, 1977, the Navy Department notified Mr. Seymour that his leave record from the Panama Canal Company showed that he had received dual pay since he had received regular pay from the Navy and a lump-sum leave payment from the Panama Canal Company for the same period. He was informed of his obligation to refund the

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amount of the lump-sum leave payment, as required by Federal Personnel Manual (FPM) Supplement 990-2, Book 630, subchapter S5.

Mr. Seymour states that following his receipt of the notice, he discussed the matter with an employee of the issuing Navy payroll office. He says this individual told him that additional information and clarification concerning his obligation in the matter would be requested and that he would be contacted "if further action was required."

He states further that following that discussion he received no additional information concerning his repayment obligation until May 18, 1981, when another memorandum was issued to him by the payroll office, again informing him of his unpaid debt. At this time he requested a waiver of the claim, which was denied by both the Department of the Navy and our Claims Group.

Upon appeal, Mr. Seymour contends that the Government's claim against him should be waived because he followed the advice of appropriate Government personnel throughout this matter; the debt accrued more than 5 years ago; the regulations have not been applied equitably to other similarly situated former Canal Zone employees; and waiver of the claim is in the best interest of the Government because the payment he received reduced the Government's leave liability at a lower rate of pay than would now be applicable.

Under the provisions of 5 U.S.C. § 5551, an employee who is separated from Government employment is entitled to a lump-sum payment for his accumulated and current accrued annual leave. However, if that individual is reemployed in Government service before the end of the projected period covered by the lump-sum payment, he is required to refund to the employing agency an amount equal to the pay for leave which would otherwise have covered the period between the date of reemployment and the end of the lump-sum period, and the leave is then restored to his account. 5 U.S.C. § 6306.

The Civil Service Commission (now Office of Personnel Management) Bulletin No. 630-33, dated August 21, 1978, provided guidelines to be used in connection with leave transfers and leave payments to former Canal Zone Government

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and Canal Company employees such as Mr. Seymour who are reemployed by other Government agencies. In keeping with the provisions of 5 U.S.C. § 6306, and FPM Supplement 990-2 Book 550, S2-4, the bulletin provides in part, that former employees of the Canal Zone Company who received lump-sum leave payments, but who, after a break in service were subsequently reemployed in a position subject to the leave system of chapter 63 of title 5, United States Code, must refund that portion of the payment covering leave that had not expired, and holiday pay for any holiday which had not occurred, before the date of reemployment.

Since Mr. Seymour had a break in service between his separation from the Canal Company but was reemployed by the Navy Department from the second day of the period covered by his lump-sum payment he is liable to refund the payment he received for all but the first day of the period. Matter of Bonin, B-200327, November 13, 1980.

As to whether collection of Mr. Seymour's leave payment may be waived, under the provisions of 5 U.S.C. § 5584, the Comptroller General may waive debts arising out of erroneous payments to Government employees when collection would be against equity and good conscience and not in the best interests of the United States. However, waiver is precluded if in the opinion of the Comptroller General:

"* * * there exists, in connection with the claim, an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee * * *." 5 U.S.C. § 5584(b)(1).

While it is not entirely clear that the debt may be characterized as resulting from an erroneous payment, we have considered whether waiver would be appropriate under the facts of this case and have determined that it would not. The Navy Accounting and Finance Center, in denying waiver of this claim, stated that Mr. Seymour's Leave and Earnings Statements showed the reinstatement of the annual leave for which he had received the lump-sum payment. In addition, we note that the Panama Canal Company's form, entitled "Commuted, Suspended, or Transferred Leave," on which

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Mr. Seymour's lump-sum leave payment was computed, the employee's copy of which we presume he received, clearly states:

"If you are re-employed by a U.S. Government agency in a leave earning position prior to your leave expiration date you are required by Federal regulations to repay the value of the unexpired leave paid you. The agency will credit you for the leave hours repaid under the agency's specific regulations."

Thus, Mr. Seymour knew or should have known that he could not retain a lump-sum payment for annual leave yet remaining to his credit after he was employed by the Navy. Matter of Kafka, B-201819, July 24, 1981; see also Matter of Windley, B-195322, November 27, 1979.

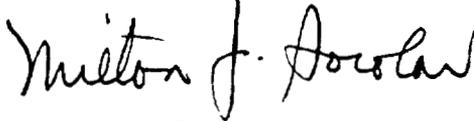
Mr. Seymour contends that he believed the Department's initial notice of his indebtedness was cancelled because he received no additional information about the matter after his first inquiry. While collection of Mr. Seymour's debt should have proceeded immediately following his receipt of the Navy Department's initial notification thereof, the delay in collection affords no basis for waiver of the debt since it has been determined that Mr. Seymour should have known that he was required to refund most of his lump-sum leave payment.

The fact that other former Panama Canal Company employees who received a lump-sum annual leave payment may not have been required to refund the amount as set forth in the regulations affords no basis to relieve Mr. Seymour of his legal obligation to refund the payment he received. Nor does Mr. Seymour's contention that collection of the debt is not in the financial interest of the Government provide a basis for waiver since it has been decided that repayment in this case may not be waived.

We conclude that collection of Mr. Seymour's debt may not be waived under 5 U.S.C. § 5584 since he was partially at fault in the matter in that he had been informed of the statutory provisions pertaining to repayment for unexpired

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leave, and he should have known that he could not retain the leave payment. Accordingly, the Claims Group's denial of Mr. Seymour's request for waiver is sustained.

for 
Comptroller General
of the United States